

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

Weekend Warrior Clothing, LLC,

Plaintiff,

v.

Amazon.com Services, LLC;
Amazon.com, Inc.,

Defendants.

Case No. 1:23-cv-00752

Judge Douglas R. Cole

Magistrate Judge Stephanie K. Bowman

**DEFENDANTS AMAZON.COM SERVICES LLC
AND AMAZON.COM, INC.'S ANSWER TO FIRST AMENDED COMPLAINT**

Defendants Amazon.com Services LLC and Amazon.com, Inc. (collectively, “Amazon”), answer Plaintiff Weekend Warrior Clothing, LLC’s First Amended Complaint as follows. Unless specifically admitted, Amazon denies all factual allegations in the First Amended Complaint.

1. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 1 of the First Amended Complaint, and therefore denies such allegations.

2. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 2 of the First Amended Complaint, and therefore denies such allegations.

3. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 3 of the First Amended Complaint, and therefore denies such allegations.

4. Amazon denies any act of infringement. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 4 of the First Amended Complaint, and therefore denies such allegations.

5. Amazon denies any act of infringement. Amazon lacks knowledge or information sufficient to form a belief as to truth of any remaining allegations of paragraph 5 of the First Amended Complaint, and therefore denies such allegations.

6. Denied.

7. Amazon denies any act of infringement. Amazon admits that Amazon.com Services LLC operates the Amazon Merch on Demand program. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 7 of the First Amended Complaint, and therefore denies such allegations.

8. Amazon admits that between March of 2022 and May of 2023, correspondence was generated between Amazon and the e-mail address twhelan40@gmail.com. Amazon denies the remaining allegations of paragraph 8 of the First Amended Complaint.

9. Denied.

10. Denied.

11. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 11 of the First Amended Complaint, and therefore denies such allegations.

12. Amazon.com Services LLC admits that it is a Delaware limited liability company with a place of business located at 410 Terry Avenue North, Seattle, Washington 98109.

13. Amazon.com, Inc. admits that it is a Delaware corporation with a place of business located at 410 Terry Avenue North, Seattle, Washington 98109.

14. Amazon denies any act of infringement alleged in paragraph 14 of the First Amended Complaint. For the purposes of this action only, Amazon does not contest that this action arises under the federal Copyright Act, Title 17 U.S.C., §§ 101 et seq. For the purpose of this action only, Amazon does not contest that this Court has subject matter jurisdiction. Amazon denies that this Court has supplemental jurisdiction.

15. Amazon lacks knowledge or information sufficient to form a belief as to whether this Court has diversity jurisdiction, and therefore denies such allegations.

16. Amazon denies any act of infringement alleged in paragraph 16 of the First Amended Complaint. For the purpose of this action only, Amazon does not contest that venue in this district is proper. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 16 of the First Amended Complaint, and therefore denies such allegations.

17. Amazon denies any act of infringement alleged in paragraph 17 of the First Amended Complaint. For the purpose of this action only, Amazon does not contest that this Court has personal jurisdiction over Amazon.

18. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 18 of the First Amended Complaint, and therefore denies such allegations.

19. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 19 of the First Amended Complaint, and therefore denies such allegations.

20. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 20 of the First Amended Complaint, and therefore denies such allegations.

21. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 21 of the First Amended Complaint, and therefore denies such allegations.

22. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 22 of the First Amended Complaint, and therefore denies such allegations.

23. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any allegations of paragraph 23 of the First Amended Complaint, and therefore denies such allegations.

24. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any allegations of paragraph 24 of the First Amended Complaint, and therefore denies such allegations.

25. Amazon admits that Exhibit A purports to provide copies of 48 certificates of registration and 50 illustrations of designs listed in paragraph 24, while the purported copy of the certificate for the design Camel Tow shows a different registration number.

26. Amazon admits that Amazon.com Services LLC operates the Amazon Merch on Demand program. Amazon denies any act of infringement, and denies all remaining allegations of paragraph 26.

27. Amazon denies any act of infringement. Amazon admits that Amazon.com Services LLC provides the Amazon Merch on Demand service, which works with content creators

in accordance with the Services Agreement, the Program Materials License Agreement, the Terms of Use, and Merch Collab by Amazon Print-on-Demand Schedule (all available at <https://merch.amazon.com/resource/201859880>). Amazon admits that content creators can upload designs, and create and promote products incorporating such designs, subject to Content Policies (<https://merch.amazon.com/resource/201858630>) after their Merch on Demand account applications are approved. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 27 of the First Amended Complaint, and therefore denies such allegations.

28. Amazon admits that the Merch on Demand program offers some print on demand services under the Services Agreement (available at <https://merch.amazon.com/resource/201859880>). Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 28 of the First Amended Complaint, and therefore denies such allegations.

29. Amazon denies any act of infringement. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 29 of the First Amended Complaint, and therefore denies such allegations.

30. Amazon admits that the image of paragraph 30 appears to be a screen capture of an Amazon order confirmation page, displaying the order number 113-6180249-7619461 and the texts “Sold by: Amazon.com Services LLC” and “Supplied by: Other.” Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 30 of the First Amended Complaint, and therefore denies such allegations.

31. Amazon admits that the image of paragraph 31 appears to be a screen capture of an e-mail confirming an order with the order number 113-1375932-5001061 has been placed on

Amazon.com. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 31 of the First Amended Complaint, and therefore denies such allegations.

32. Amazon admits that Amazon.com Services LLC makes and ships some products that use designs provided by content creators under the Services Agreement, the Program Materials License Agreement, the Terms of Use, and Merch Collab by Amazon Print-on-Demand Schedule (available at <https://merch.amazon.com/resource/201859880>). Amazon admits that Amazon.com Services LLC or one or more of its affiliates delivers products, processes payments, and handles customer services and returns for products sold on Amazon.com. Amazon admits that content creators in the Merch on Demand program may receive payments when products incorporating designs they provided in that program are sold on Amazon.com. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 32 of the First Amended Complaint, and therefore denies such allegations.

33. On information and belief, Amazon admits that the order with the order number 113-1375932-5001061 gave Amazon.com, 3837 Bay Lake Trail, Suite 111, North Las Vegas, NV, 89030 as the return address.

34. Amazon admits the following language is part of AMAZON MERCH ON DEMAND SERVICES AGREEMENT (updated: June 21, 2022):

Pricing and Sales. Amazon will be the seller of record for the Products. Amazon has sole discretion to determine price, availability, distribution channels, and terms of sale for the Products. We are responsible for and have sole discretion related to processing payments, collecting payments, addressing requests for refunds, and providing customer service related to our obligations, and we will have sole

ownership and control of all sales and other data we obtain from customers in connection with the Program.

Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 34 of the First Amended Complaint, and therefore denies such allegations.

35. Amazon admits that product detail pages for Amazon Merch on Demand products regularly include the language “ships from Amazon.com” and “sold by Amazon.com.” Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 35 of the First Amended Complaint, and therefore denies such allegations.

36. Amazon admits that for all sales made through Merch on Demand on Amazon.com, the customers complete their purchases on the Amazon.com website. Amazon admits that for sales made on Amazon.com, Amazon.com Services LLC or an affiliate receives customers’ payment information, processes the payments, provides order confirmations on the Amazon.com website and by e-mail, provides tracking numbers for shipment, and provides other customer services. Amazon admits that when an order is placed for products designed by content creators, Amazon.com Services LLC or a third-party prints the products in accordance with the Services Agreement, the Program Materials License Agreement, the Terms of Use, and Merch Collab by Amazon Print-on-Demand Schedule (available at <https://merch.amazon.com/resource/201859880>). Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 36 of the First Amended Complaint, and therefore denies such allegations.

37. Amazon denies any act of infringement. The allegations contained in paragraph 37 call for a legal conclusion for which no response is deemed necessary. To the extent a response is deemed necessary, Defendants deny such allegations. Amazon lacks knowledge or information

sufficient to form a belief as to the truth of the allegations of paragraph 37 of the First Amended Complaint, and therefore denies such allegations.

38. Denied.

39. Amazon denies any act of infringement. Amazon admits that Exhibit B purports to be screen captures of four product detail pages identified by Amazon Standard Identification Numbers (ASINs) B0C2YF5YJD, B09ZXYQQQZ, B0C2GXMWSK, and B0C4KZ7KG7. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 39 of the First Amended Complaint, and therefore denies such allegations.

40. Denied.

41. Amazon denies any act of infringement. Amazon lacks knowledge or information sufficient to form a belief as to the truth of any remaining allegations of paragraph 41 of the First Amended Complaint, and therefore denies such allegations.

42. Denied.

43. Denied.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Amazon incorporates by reference its responses to the preceding paragraphs of this First Amended Complaint.

49. Amazon lacks knowledge or information sufficient to form a belief as to the truth of the allegations of paragraph 49 of the First Amended Complaint, and therefore denies such allegations.

50. Denied.

51. Denied.

52. Denied.

53. Denied.

54. Denied.

55. Denied.

56. Amazon incorporates by reference its responses to the preceding paragraphs of this First Amended Complaint.

57. Denied.

58. Denied.

59. Denied.

60. Denied.

61. Denied.

62. Amazon incorporates by reference its responses to the preceding paragraphs of this First Amended Complaint.

63. Denied.

64. Amazon denies any act of infringement. Amazon admits that the AMAZON MERCH ON DEMAND SERVICES AGREEMENT requires all content creators and their content to “comply with all applicable laws, ordinances, rules, regulations, orders, licenses, permits, judgments, decisions, or other requirements.” Amazon admits that its Content Policies indicate that “[c]ontent incorporating intellectual property that you do not have the right to use” is not allowed, and Amazon may take corrective actions in case of violation. Amazon admits it has the right to remove allegedly infringing content from Amazon.com.

65. Denied.

RESPONSE TO PLAINTIFF'S PRAYER FOR RELIEF

Amazon denies that Plaintiff is entitled to any relief, including the relief prayed for in Plaintiff's Prayer for Relief.

GENERAL DENIAL

Except as expressly admitted herein, Amazon denies each and every allegation of Plaintiff's First Amended Complaint.

ADDITIONAL DEFENSES

Further answering and as additional defenses, Amazon states the following without admitting any allegation of the First Amended Complaint not otherwise admitted and without assuming the burden of proving any fact that is otherwise Plaintiff's burden to prove. Amazon reserves the right to amend or augment these defenses based on further investigation and discovery.

FIRST ADDITIONAL DEFENSE (Failure to State a Claim)

1. Plaintiff's claims fail, in whole or in part, because the First Amended Complaint and each and every claim stated therein, fails to state a claim upon which relief can be granted.

SECOND ADDITIONAL DEFENSE (Non-Infringement)

2. Amazon does not infringe and has not infringed the asserted copyrights.

3. Amazon has not reproduced, distributed, and/or displayed any alleged copyrighted work or any derivation of any alleged copyrighted work, and have not caused or induced others to reproduce, distribute, and/or display any alleged copyrighted work or any derivation of any alleged copyrighted work.

**THIRD ADDITIONAL DEFENSE
(Lack of Notice)**

4. Plaintiff did not give Amazon valid notice of one or more of its claims prior to suit. If infringement occurred, Amazon's involvement was innocent and without notice or actual knowledge.

**FOURTH ADDITIONAL DEFENSE
(Invalidity)**

5. On information and belief, one or more of the Registrations that Plaintiff asserts in this action are invalid.

6. Plaintiff's copyrights are invalid for failure to meet the conditions of copyright, including but not limited to lack of originality, and/or otherwise comply with one or more provisions of Title 17 of the United States Code.

**FIFTH ADDITIONAL DEFENSE
(Failure to Mitigate Damages)**

7. Plaintiff's claims against Amazon, if any, are barred, in whole or in part, by failure to mitigate damages.

**SIXTH ADDITIONAL DEFENSE
(Fair Use)**

8. The claims made in the First Amended Complaint are barred, in whole or in part, by the doctrines of fair use, nominative fair use and/or descriptive use.

**SEVENTH ADDITIONAL DEFENSE
(No Causation)**

9. Plaintiff's claims against Amazon, if any, are barred, in whole or in part, because Plaintiff's damages were not caused by Amazon.

**EIGHTH ADDITIONAL DEFENSE
(No Damage)**

10. Without admitting that the First Amended Complaint states a claim, there has been no damage in any amount, manner or at all by reason of any act alleged against Plaintiff in the First Amended Complaint, and the relief prayed for in the First Amended Complaint therefore cannot be granted.

**NINTH ADDITIONAL DEFENSE
(Lack of Irreparable Harm)**

11. Plaintiff's claims for injunctive relief are barred because Plaintiff cannot show that it will suffer any irreparable harm from Amazon's actions.

**TENTH ADDITIONAL DEFENSE
(Adequacy of Remedy at Law)**

12. The alleged injury or damage suffered by Plaintiff, if any, would be adequately compensated by damages. Accordingly, Plaintiff has a complete and adequate remedy at law and is not entitled to seek equitable relief.

**ELEVENTH ADDITIONAL DEFENSE
(First Amendment)**

13. The claims made in the First Amended Complaint are barred, in whole or in part, by the First Amendment to the Constitution of the United States.

TWELFTH ADDITIONAL DEFENSE

14. Amazon adopts and hereby incorporates by reference any and all additional defenses filed by or on behalf of any party to this lawsuit, and reserves the right to supplement these Additional Defenses as this matter develops.

PRAYER FOR RELIEF

WHEREFORE, Amazon prays for the following relief:

1. A judgment dismissing in its entirety Plaintiff's First Amended Complaint against Amazon, with prejudice, and finding that Plaintiff recovers nothing thereon;
2. A judgment declaring the copyright registrations invalid and unenforceable;
3. A judgment declaring that Amazon has not infringed the asserted copyrights;
4. That the Court under 17 U.S.C. § 505 award Amazon full costs and expenses of litigation, including reasonable attorneys' fees; and
5. Such further relief to Amazon as is just and proper.

DEMAND FOR A JURY TRIAL

In accordance with Fed. R. Civ. P. 38(b), Amazon hereby demands a jury trial on all issues so triable.

Dated: March 12, 2024

Respectfully Submitted,

/s/ Gregory F. Ahrens

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CERTIFICATE OF SERVICE

I hereby certify that on March 12, 2024, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system, which will send notice of electronic filing to all counsel or record registered with the Court's CM/ECF system as follows:

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